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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3825 OF 2007

Jayant A. Joshi & Ors. .. Applicants

V/s

State of Maharshtra & Anr. .. Respondents

Mr.Adik Shirodkar, Senior Advocate with Mr.Sorankar i/b Goenka Law Associates for the applicants.

Ms. R.M. Gadhavi, A.P.P. for the State.

CORAM : D.G. KARNIK, J.

DATE : 26TH NOVEMBER 2007

P.C. :

1. Heard Mr.Shirodkar, Senior Advocate for the applicants and the learned A.P.P. for the State.

2. The applicants have filed this application for anticipatory bail under section 438 of Cr.P.C. in connection with C.R. No.149 of 2007 registered at the Silvassa Police Station for the offence punishable under sections 406, 408, 409, 379, 120(B) read with section 34 of the I.P.C.

3. Previous application bearing Criminal Misc. Application No.38 of 2007 filed by the applicants has been rejected by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa by an order dated 21st November 2007.

4. The applicants are officers of Greater Bombay Co-operative Bank Ltd. (for short "the Bank"). The Bank advanced certain credit facilities to M/s Wings Entertainment Ltd. (for short "the company"). As the company was unable to pay the borrowings, the Bank took action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and took possession of the premises as well as the plant and machinery of the company at nos.18 to 21, Ami Najar Industrial Estate, Silvassa. At the time of taking possession, a panchanama was drawn on 8th December 2006 which recites that the Bank has taken possession of the immovable property, and the plant and machinery. Inventory of the materials lying in the premises was made and the list was prepared which is at Exhibit-A to the panchanama. A perusal of Exhibit-A to the panchanama shows that several thousands of cassettes lying in the premises which were also taken in custody by the Bank. The premises were thereafter sealed by the Bank.

5. In the proceedings before the Debt Recovery Tribunal (DRT), a commissioner was appointed for taking inventory of the materials lying in the premises of the company. The commissioner took inventory on 16/17th April 2007. It was revealed that several thousands of cassettes, which were taken by the Bank in its custody on 8th December 2006, had disappeared from the premises. The company thereafter appears to have lodged a private complaint before the Magistrate, who ordered an enquiry under section 156 of the Cr.P.C. Thereafter, the police have recorded an F.I.R. Though the investigation has been carried out for 5-6 months, the police have not been able to make any breakthrough and have not been able to trace the cassettes which have been removed from the premises. The police, therefore, want custody of the present applicants who are bank officers for the purpose of custodial interrogation.

6. Mr.Shirodkar, learned counsel for the applicants, submitted that the bank officers are not at all responsible for the theft of the cassettes nor are they responsible for any of the offence including the offence of breach of trust. The applicants have been cooperating with the investigation and it is not necessary that the applicants should be taken in custody. Relying upon a decision of the Supreme Court in **Joginder Kumar v. State of U.P., reported in (1994)**

4 SCC 260, Mr.Shirodkar submitted that no arrest can be made merely because it is lawful for the police officers to do so. The existence of power to arrest is one thing and justification for the exercise of it is quite another. The police officers are not entitled to arrest any person merely on the basis of suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer to effect the arrest that such arrest is necessary and justified.

7. Mr.Shirodkar also referred to and relied upon the decision of the Supreme Court in **Bhagirathsingh Mahipatsingh Jadeja v. State of Gujarat, reported in (1984) 1 SCC 284** and submitted that even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence. Mr.Shirodkar submitted that the applicants are sought to be arrested by way of punishment and their arrest and detention is not at all necessary. He further submitted that though the offence has been registered about more than 5 months ago, the applicants have in no way tampered with the evidence nor intermeddled with the investigation and, therefore, there is no reason for arresting the

applicants.

8. There is a clear distinction between a punitive detention and preventive detention and a detention for the purpose of investigation. Punitive detention is one where a person is detained in jail after conviction. Arrest of a person for the purpose of custodial investigation is a part of investigation and cannot be equated with punitive detention. It is often necessary for proper investigation into the crimes and is permitted by law.

9. Evidence on record, particularly the panchanama which bears the signatures of the bank officers, clearly establishes that the Bank had dominion over the property and the Bank was in possession of the cassettes. Admittedly, the cassettes have disappeared while they were in the custody of he Bank. Whether the cassettes have been stolen, who is the thief or whether the bank officers are party to the theft are the matters of investigation for which custodial investigation appears to be necessary. Though five months have passed and the police have not been able to make any headway in the investigation over the disappearance of the cassettes. In the circumstances, it cannot be said that the presence of the applicants is not necessary for the purpose of the investigation in the crime. Perhaps the

custodial investigation may throw more light into the disappearance of the cassettes. In the circumstances, I do not see any reason to take a view different than the view taken by the learned Sessions Judge in his well reasoned order dated 21st November 2007.

10. It is clarified that if the applicants are arrested, they need not be detained in the custody for a period longer than necessary for the purpose of investigation. If the applicants are detained in custody after their arrest for a period longer than necessary for investigation, they are at liberty to approach the court for appropriate relief. With this observations, the application for anticipatory bail is rejected.

11. After this order was passed in the open Court, Mr.Shirodkar submitted that the applicants may be granted some time to surrender before the police at Silvassa. The applicants are granted one week’s time to surrender before the police.

12. It is clarified that all observations made in this order are merely prima facie for the purpose of deciding this application for anticipatory bail and shall not be used for any other purpose.

(D.G. KARNIK, J.)